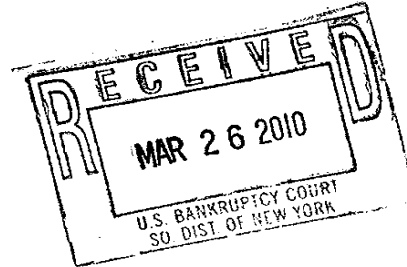


MEMORANDUM ENDORSEMENT

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3
4
5 CASE NO. 08-01789



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7
8 MOTION FOR BANKRUPTCY RULE 2018 HEARING

9
10 DEAR HONORABLE JUDGE BURTON LIFLAND,

11
12 As an interested party in these proceedings I request that the court hears from me.

13
14 I am a denied claimant in this case(clm# 000398) and have 2 matters to bring before this
15
16 court.

17
18 1-Claim matter

19 I have asked this court and trustee several times now for a hearing on my claim denial without
20
21 any time frame given to me for my hearing. As such my procedural rights are being ignored-

22
23 For without a hearing on my claim denial I can not launch an appeal if needed.

24
25 I have stated several times it is unequitable to clawback proceeds from the Fairfield sentry fund
26
27 owners/investors without also allowing them liquidation proceeds inclusion. The clawback suit

1 treats us as direct investors and the claim denial treats us as indirect investors. It is unequitable to
2
3 treat us both ways. It should be no clawback/no liquidation inclusion or clawback/liquidation
4
5 inclusion
6
7 Please allow me a hearing on this matter, or if you prefer, please consider the above common
8
9 sense information when you make your class ruling on whether indirect investors should be
10
11 included in the madoff liquidation proceeds.
12
13 If you rule against including indirect investors in the madoff liquidation proceeds please send me
14
15 a letter from the court referencing your decision with my claim # -so I can appeal.
16

17 2-TRUSTEE's COUNCIL BAD FAITH MATTER
18

19 The trustee and his council is not immune from being sued for bad acts of administration
20
21 For trustee's council to publically state that the trustee would allow indirect investors to
22
23 participate in liquidation and then deny my claim a year later is an intentional act of bad faith or
24
25 negligence
26
27 The trustee's council went way past his allowable duties/powers to make a promise he was not
28

1
2 entitled to make nor keep. It is not within a trustee's administrative duties to give legal
3
4 advice/opinions
5

6 FROM BAP # CC-99-1353-PCME & CC-99-1439-PCME

7 B. Qualified quasi-judicial immunity

8 Having determined that Curry and Feder are not absolutely immune from liability for their
9 failure to send notice of the hearing, we turn to the question of whether they enjoy qualified
10 immunity for that action. The law is clear that the trustee is not immune from liability for her
11 allegedly negligent administration. As the panel said in Kashani: It has long been established that
12 a bankruptcy trustee is an officer of the appointing court. As an officer of the court, the trustee is
13 entitled to a form of derivative judicial immunity from liability for actions carried out within the
14 scope of the trustee's official duties. A trustee is entitled to such immunity only if the trustee is
15 acting within the scope of authority conferred upon the trustee by the appropriate statute(s) or the
16 court. While a trustee is allowed to make reasonable mistakes where discretion is allowed, a
17 trustee may be sued for intentional or negligent actions which amount to violations of the duties
18 imposed upon the trustee by law. 190 B.R. at 883 (citations omitted; emphasis supplied).

19 The trustee's duty to give notice of hearings is a duty imposed on the court clerk by law. Fed. R.
20 Bankr. P. 2002(b). The court has delegated that duty to the trustee. Under Kashani and In re
21 Cochise College Park, 703 F.2d 1339 (9th Cir. 1983), on which the panel in Kashani relied, the
22 trustee and her staff are not immune from suit for alleged negligent actions that amount to
23 violations of those duties. The Ninth Circuit has specifically rejected the reasoning of the cases
24 on which the trustee relies for the proposition that a trustee is liable only for intentional acts. See
25 Cochise College Park, 703 F.2d at 1357 n.26. Thus, the bankruptcy court correctly concluded
26 that the Curry and Feder are not immune from liability for failing to send notice of the hearing

27 Th trustee never denied nor clarified his council's statement
28

29 After my claim denial hearing ,if the denial is upheld,I ask your honor to allow me leave of this
30
31 court so I can prosecute my complaint against the trustee's council for his intentional bad act
32
33 in state court with a jury trial.

34 Respectfully yours

Loren Wiken

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2 Laurence Wiener-trustee for pacific west health medical center inc employees retirement trust
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8
9

10 **Memorandum Endorsement, April 14, 2010**
11

12 In light of the Court's Order of April 13, 2010 scheduling a hearing for October
13 19, 2010 to address the customer status of indirect investors (Docket No. 2205), Movant's
14 request for an individual hearing with respect to this issue is denied, without prejudice to
15 the Movant's right to raise his objections at the appropriate hearing. As the Court has not
16 yet determined the status of indirect investors, Movant's request for leave to file a state
17 court action is premature, and therefore denied. Finally, as a creditor with claims filed in
18 this liquidation proceeding, Movant fails to demonstrate a separate need for intervention
19 under Rule 2018 of the Federal Rules of Bankruptcy Procedure, and his request is
20 therefore denied.

21 Dated: New York, New York
22 April 14, 2010

23 /s/Burton R. Lifland
24 Hon Burton R. Lifland
25 United States Bankruptcy Judge
26
27
28